

FILED BY _____ D.C.

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE
 WESTERN DIVISION

THOMAS A. COLE
 CLERK, U.S. DISTRICT COURT
 WD OF TN, MEMPHIS

WALTER REEVES,

Petitioner,

vs.

RANDY J. DAVIS,

Respondent.

No. 04-2967-M1/An

ORDER ASSESSING APPELLATE FILING FEE

Petitioner Walter Reeves, Bureau of Prisons inmate registration number 21464-001, an inmate at the Federal Correctional Institution in Memphis ("FCI-Memphis"), filed a notice of appeal from the Court's order of dismissal on which judgment entered on September 12, 2005. The order of dismissal certified under 28 U.S.C. § 1915(a)(3) that this appeal was not taken in good faith. To the extent plaintiff sought to appeal, the order also directed the plaintiff to comply with the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. § 1915, by filing an in forma pauperis affidavit and the inmate trust fund account information required by the PLRA.

The United States Court of Appeals for the Sixth Circuit has held that a certification that an appeal is not taken in good faith does not affect an indigent prisoner plaintiff's ability to take advantage of the installment procedures contained in § 1915(b). McGore v. Wrigglesworth, 114 F.3d 601, 610-11 (6th Cir. 1997).

11

Plaintiff has now submitted the documents required by § 1915(a)(2) showing the average monthly deposits and the average monthly balance in his prison trust fund account for the six months prior to the filing of the notice of appeal, and the account balance when the notice of appeal was submitted. Accordingly, it is ORDERED that in addition to the initial filing fee assessed in the Court's previous order of dismissal, the trust fund officer at plaintiff's prison shall calculate a partial appellate filing fee equal to twenty percent (20%) of the greater of the average balance in or deposits to the plaintiff's trust fund account for the six months immediately preceding the notice of appeal. When the account contains any funds, the trust fund officer shall collect them and pay them directly to the Clerk of Court. If the funds in plaintiff's account are insufficient to pay the full amount of the partial appellate filing fee, the prison official is instructed to withdraw all of the funds in the plaintiff's account and forward them to the Clerk of Court. On each occasion that funds are subsequently credited to plaintiff's account the prison official shall immediately withdraw those funds and forward them to the Clerk of Court, until the partial appellate filing fee is paid in full. Both fees shall be collected and assessed simultaneously.

It is further ORDERED that after the partial appellate filing fee is fully paid, the trust fund officer shall withdraw from the plaintiff's account and pay to the Clerk of this Court monthly payments equal to twenty percent (20%) of all deposits credited to plaintiff's account during the preceding month, but only when the

amount in the account exceeds \$10.00, until the entire \$255.00 filing fee is paid.

Each time that the trust fund officer makes a payment to the Court as required by this order, he shall print a copy of the prisoner's account statement showing all activity in the account since the last payment under this order and file it with the Clerk along with the payment.

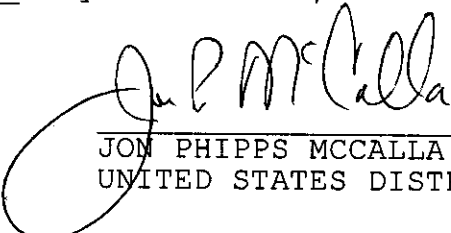
All payments and account statements shall be sent to:

Clerk, United States District Court, Western District of Tennessee, 167 N. Main, Room 242, Memphis, TN 38103

and shall clearly identify plaintiff's name, inmate number, and the case number on the first page of this order. The plaintiff shall cooperate with prison officials in the making of these payments. If plaintiff is transferred to a different prison or released, he is ORDERED to notify the Court immediately of his change of address. If still confined, he shall provide the officials at the new prison with a copy of this order.

The Clerk will mail a copy of this order to the prison official in charge of prison trust fund accounts at the FCI-Memphis and to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED this 31 day of October, 2005.


JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 11 in case 2:04-CV-02967 was distributed by fax, mail, or direct printing on November 1, 2005 to the parties listed.

Walter Reeves
FCI-MEMPHIS
21464-001
1101 John A. Denie Road
P.O. Box 34550
Memphis, TN 38134--055

Honorable Jon McCalla
US DISTRICT COURT